



APPLICATION GRANTED

SO ORDERED *Vern Broderick*

VERNON S. BRODERICK

U.S.D.J. 7/26/2021

Plaintiff is hereby directed to file any amended complaint by on or before August 5, 2021. Defendants' deadline to respond is accordingly extended until August 19, 2021.

GEORGIA M. PESTANA
Acting Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MATTHEW W. McQUEEN
Senior Counsel
phone: (212) 356-2423
fax: (212) 356-3509
email: mmcqueen@law.nyc.gov

July 23, 2021

BY ECF

Honorable Vernon S. Broderick
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Calvin Spence v. City of New York, et. al.
20 CV 10090 (VSB)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Georgia M. Pestana, Acting Corporation Counsel of the City of New York, and I represent defendants Kevin Weber and The City of New York ("Defendants") in the above-referenced matter. Defendants write to respectfully request (1) that the Court set a date certain for plaintiff to amend the complaint; and (2) that defendants be allowed two weeks after that date to file their motion to dismiss, should plaintiff fail to amend. Alternatively, if the Court does not set a date for plaintiff to amend, defendants respectfully request a two-week extension of time from today, to August 6, 2021, to file their motion to dismiss.

By way of background, on June 23, 2021, defendants served a Rule 11 Safe Harbor letter on plaintiff. Plaintiff's counsel, Samuel DePaola, since requested defendants' consent to file an amended complaint and advised if defendants did not consent plaintiff would amend his complaint as a matter of right after defendants file their motion to dismiss. Accordingly, defendants consented, but advised plaintiff that they do not believe that his proposed amended complaint cures all defects in his complaint and requested that plaintiff reconsider their June 23 letter and withdraw all claims discussed in the letter. On July 20, Mr. DePaola informed the undersigned that he would be sending a final proposed amended complaint shortly and would seek leave to amend the complaint by the end of the week. Having not heard from Mr. DePaola since that time, the undersigned sent Mr. DePaola an e-mail this morning at 5:14am requesting confirmation that he would be filing his motion to amend today, and also

advising that defendants would need to write to the Court to request additional time to file their motion to dismiss in the event that plaintiff does not file today, given that the undersigned stopped working on the motion in anticipation of plaintiff amending the complaint. The time is now 7:10 PM, almost 14 hours after the above-referenced e-mail was sent, and Mr. DePaola has not responded.

Accordingly, for the reasons discussed herein, defendants respectfully request (1) that the Court set a date certain for plaintiff to amend the complaint; and (2) that defendants be allowed two weeks after that date to file their motion to dismiss, should plaintiff fail to amend. Alternatively, if the Court does not set a date for plaintiff to amend, defendants respectfully request a two-week extension of time from today, to August 6, 2021, to file their motion to dismiss, and corresponding extensions of time for plaintiff's opposition and defendants' reply.

Defendants thank the Court for its time and consideration in this regard.

Respectfully submitted,

/s/ Matt McQueen

Matthew W. McQueen
Special Federal Litigation Division

cc: Samuel C. DePaola, Esq. (by ECF)
Attorney for Plaintiff